

Assembly Bill No. 1551

CHAPTER 336

An act to amend Sections 26003 and 26011 of the Public Resources Code, and to amend Sections 747, 2827.10, and 2852 of the Public Utilities Code, relating to energy, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1551, Committee on Utilities and Commerce. Energy: program eligibility and costs.

(1) The California Alternative Energy and Advanced Transportation Financing Authority Act established the California Alternative Energy and Advanced Transportation Financing Authority. The act defines the term "alternative sources" to mean the application of cogeneration technology, the conservation of energy, and the use of specified renewable energy sources under 30 megawatts, or other sources of energy that reduce the use of fossil and nuclear fuels and are intended primarily to offset part or all of a customer's own electrical requirements. The authority is authorized to purchase alternative source energy or projects for sale to a specified participating party and to make a loan to a participating party to purchase alternative source energy or projects by entering into various specified instruments including prepayment purchase contracts.

This bill would change the definition of "alternative sources" by deleting the requirement that the energy sources be intended primarily to offset part or all of a customer's own electrical requirements. The bill would require the authority to enter into a prepayment contract with a participating party only for energy derived from an alternative source to the extent the prepayment is for energy intended to primarily offset part or all of the authority's or a participating party's own electrical requirements.

(2) A decision of the Public Utilities Commission (PUC) adopted the California Solar Initiative. Existing law requires the PUC to undertake certain steps in implementing the California Solar Initiative, defines what is an eligible solar energy system for purposes of the program, and regulates the use of funds under the California Solar Initiative, including ensuring that not less than 10% of the funds for the California Solar Initiative are utilized for the installation of solar energy systems on low-income residential housing, defined to include, among other housing, a multifamily residential complex in which at least 20% of the total units are sold or rented to lower income households and those units are subject to a deed restriction or

affordability covenant with a public entity that ensures those units' affordability for a period of at least 30 years.

This bill would revise and recast the definition of "low-income residential housing" for the purposes of the California Solar Initiative.

(3) Existing law requires every electrical corporation, as defined, to file with the PUC a standard tariff providing net energy metering for eligible fuel cell customer-generators. Under existing law, a fuel cell electrical generating facility, as defined, is eligible for participation in the tariff if its operation commenced before January 1, 2010.

This bill would extend this eligibility to January 1, 2014.

(4) Existing law requires the PUC to prepare a written report for the Governor and the appropriate policy committees of the Legislature, on an annual basis, regarding the costs of specified programs and activities conducted by electrical or gas corporations that have more than a specified number of customers in California. Existing law requires the report to be completed and submitted no later than February 1 of each year.

This bill instead would require that report to be completed and submitted no later than May 31 of each year.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 26003 of the Public Resources Code is amended to read:

26003. As used in this division, unless the context otherwise requires:

(a) "Authority" means the California Alternative Energy and Advanced Transportation Financing Authority established pursuant to Section 26004, and any board, commission, department, or officer succeeding to the functions of the authority, or to which the powers conferred upon the authority by this division shall be given.

(b) "Cost" as applied to a project or portion of the project financed under this division means all or part of the cost of construction and acquisition of all lands, structures, real or personal property or an interest in the real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which those buildings or structures may be moved; the cost of all machinery, equipment, and furnishings, financing charges, interest prior to, during, and for a period after, completion of construction as determined by the authority; the cost of the purchase or sale of energy derived from an alternative source pursuant to subdivision (g) of Section 26011; provisions for working capital; reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements; the cost of architectural, engineering, financial, accounting, auditing and legal services, plans, specifications, estimates, administrative expenses, and other

expenses necessary or incident to determining the feasibility of constructing any project or incident to the construction, acquisition, or financing of a project.

(c) (1) “Alternative sources” means the application of cogeneration technology, as defined in Section 25134; the conservation of energy; or the use of solar, biomass, wind, geothermal, hydroelectricity under 30 megawatts, or any other source of energy, the efficient use of which will reduce the use of fossil and nuclear fuels.

(2) “Alternative sources” does not include a hydroelectric facility that does not meet state laws pertaining to the control, appropriation, use, and distribution of water, including, but not limited to, the obtaining of applicable licenses and permits.

(d) “Advanced transportation technologies” means emerging commercially competitive transportation-related technologies identified by the authority as capable of creating long-term, high value-added jobs for Californians while enhancing the state’s commitment to energy conservation, pollution reduction, and transportation efficiency. Those technologies may include, but are not limited to, any of the following:

- (1) Intelligent vehicle highway systems.
- (2) Advanced telecommunications for transportation.
- (3) Command, control, and communications for public transit vehicles and systems.
- (4) Electric vehicles and ultralow-emission vehicles.
- (5) High-speed rail and magnetic levitation passenger systems.
- (6) Fuel cells.

(e) “Financial assistance” includes, but is not limited to, either, or any combination, of the following:

(1) Loans, loan loss reserves, interest rate reductions, proceeds of bonds issued by the authority, insurance, guarantees or other credit enhancements or liquidity facilities, contributions of money, property, labor, or other items of value, or any combination thereof, as determined by, and approved by the resolution of, the board.

(2) Any other type of assistance the authority determines is appropriate.

(f) “Participating party” means either of the following:

(1) A person or an entity or group of entities engaged in business or operations in the state, whether organized for profit or not for profit, that does either of the following:

(A) Applies for financial assistance from the authority for the purpose of implementing a project in a manner prescribed by the authority.

(B) Participates in the purchase or sale of energy derived from an alternative source pursuant to subdivision (g) of Section 26011.

(2) A public agency or nonprofit corporation that does either of the following:

(A) Applies for financial assistance from the authority for the purpose of implementing a project in a manner prescribed by the authority.

(B) Participates in the purchase or sale of energy derived from an alternative source pursuant to subdivision (g) of Section 26011.

(g) “Project” means a land, building, improvement to the land or building, rehabilitation, work, property, or structure, real or personal, stationary or mobile, including, but not limited to, machinery and equipment, whether or not in existence or under construction, that utilizes, or is designed to utilize, an alternative source, or that is utilized for the design, technology transfer, manufacture, production, assembly, distribution, or service of advanced transportation technologies, or an arrangement for the purchase, including prepayment, or sale of energy derived from an alternative source pursuant to subdivision (g) of Section 26011.

(h) “Public agency” means a federal or state agency, department, board, authority, state or community college, university, or commission, or a county, city and county, city, regional agency, public district, school district, or other political entity.

(i) (1) “Renewable energy” means a device or technology that conserves or produces heat, processes heat, space heating, water heating, steam, space cooling, refrigeration, mechanical energy, electricity, or energy in any form convertible to these uses, that does not expend or use conventional energy fuels, and that uses any of the following electrical generation technologies:

- (A) Biomass.
- (B) Solar thermal.
- (C) Photovoltaic.
- (D) Wind.
- (E) Geothermal.

(2) For purposes of this subdivision, “conventional energy fuel” means any fuel derived from petroleum deposits, including, but not limited to, oil, heating oil, gasoline, fuel oil, or natural gas, including liquefied natural gas, or nuclear fissionable materials.

(3) Notwithstanding paragraph (1), for purposes of this section, “renewable energy” also means ultralow-emission equipment for energy generation based on thermal energy systems such as natural gas turbines and fuel cells.

(j) “Revenue” means all rents, receipts, purchase payments, loan repayments, and all other income or receipts derived by the authority from a project, or the sale, lease, or other disposition of alternative source or advanced transportation technology facilities, or the making of loans to finance alternative source or advanced transportation technology facilities, and any income or revenue derived from the investment of money in any fund or account of the authority.

SEC. 2. Section 26011 of the Public Resources Code is amended to read: 26011. The authority is authorized and empowered:

- (a) To adopt an official seal.
- (b) To sue and be sued in its own name.
- (c) To issue bonds, notes, bond anticipation notes, and other obligations of the authority, including, at the option of the authority, obligations bearing interest that is taxable for purposes of federal income taxation, for any of its purposes and to fund or refund the same, all as provided in this division.

(d) To determine the location and character of a project to be financed under the provisions of this division, to lend financial assistance to a participating party, to enter into loan agreements with a participating party for the financing of a project including creating a lien or security interest in the property, to construct, reconstruct, renovate, replace, lease, as lessor or lessee, and regulate the same, and to enter into contracts for the sale of a project, including installment sales or sales under conditional sales contracts.

(e) To fix fees and charges for projects, and interest rates with respect to loans for projects, and to revise from time to time the fees and charges and interest rates, and to collect rates, rents, fees, and charges for the use of, and for a facility or service furnished, or to be furnished, by a project or part of the project and to contract with a person, partnership, association, corporation, or public agency with respect to the project, and to fix the terms and conditions upon which a project may be sold or disposed of, whether upon installment sales contracts or otherwise.

(f) To employ and fix the compensation of bond counsel, financial consultants, and advisers as may be necessary in its judgment in connection with the issuance and sale of any bonds, notes, bond anticipation notes, or other obligations of the authority; to contract for engineering, architectural, accounting, or other services of appropriate state agencies as may be necessary in the judgment of the authority for the successful development of a project; and to pay the reasonable costs of consulting engineers, architects, accountants, and construction experts employed by a participating party if, in the judgment of the authority, the services are necessary to the successful development of a project, and the services are not obtainable from a state agency.

(g) To purchase alternative source energy or projects from a person or entity for sale to a participating party, or to make a loan to a participating party to purchase alternative source energy or projects, or to purchase from a person or entity that has contracted to sell alternative source energy to a participating party the right to receive purchase payments and related rights under that contract or any related contracts. Notwithstanding any other applicable law, the authority and a public agency, for purposes of a program or financing, shall have the power to enter into contractual arrangements and related agreements or instruments, including, without limitation, a prepayment purchase contract, lease, loan, construction, security, operation and maintenance, or other agreement or instrument, with the authority or with a participating party, upon the terms and subject to the conditions that may be necessary or convenient to accomplish the purposes of this subdivision. The authority shall only enter into a prepayment contract with a participating party for energy derived from an alternative source to the extent the prepayment is for energy intended to primarily offset part or all of the authority's or a participating party's own electrical requirements.

(h) To do all things generally necessary or convenient to carry out the purposes of this division.

SEC. 3. Section 747 of the Public Utilities Code is amended to read:

747. (a) It is the intent of the Legislature that the commission reduce rates for electricity and natural gas to the lowest amount possible.

(b) The commission shall prepare a written report on the costs of programs and activities conducted by each electrical corporation and gas corporation that is subject to this section, including activities conducted to comply with their duty to serve. The report shall be completed on an annual basis before May 31 of each year, and shall identify, clearly and concisely, all of the following:

(1) Each program mandated by statute and its annual cost to ratepayers.

(2) Each program mandated by the commission and its annual cost to ratepayers.

(3) Energy purchase contract costs and bond-related costs incurred pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(4) All other aggregated categories of costs currently recovered in retail rates as determined by the commission.

(c) As used in this section, the reporting requirements apply to electrical corporations with at least 1,000,000 retail customers in California and gas corporations with at least 500,000 retail customers in California.

(d) The report required by subdivision (b) shall be submitted to the Governor and the Legislature no later than May 31 of each year.

(e) The commission shall post the report required by subdivision (b) in a conspicuous area of its Internet Web site.

SEC. 4. Section 2827.10 of the Public Utilities Code is amended to read:

2827.10. (a) As used in this section, the following terms have the following meanings:

(1) "Electrical corporation" means an electrical corporation, as defined in Section 218.

(2) "Eligible fuel cell electrical generating facility" means a facility that includes the following:

(A) Integrated powerplant systems containing a stack, tubular array, or other functionally similar configuration used to electrochemically convert fuel to electric energy.

(B) An inverter and fuel processing system where necessary.

(C) Other plant equipment, including heat recovery equipment, necessary to support the plant's operation or its energy conversion.

(3) "Eligible fuel cell customer-generator" means a customer of an electrical corporation that meets all the following criteria:

(A) Uses a fuel cell electrical generating facility with a capacity of not more than one megawatt that is located on or adjacent to the customer's owned, leased, or rented premises, is interconnected and operates in parallel with the electric grid while the grid is operational or in a grid independent mode when the grid is nonoperational, and is sized to offset part or all of the eligible fuel cell customer-generator's own electrical requirements.

(B) Is the recipient of local, state, or federal funds, or who self-finances projects designed to encourage the development of eligible fuel cell electrical generating facilities.

(C) Uses technology that meets the definition of an “ultra-clean and low-emission distributed generation” in subdivision (a) of Section 353.2.

(4) “Net energy metering” has the same meaning as that term is defined in Section 2827.9.

(b) Every electrical corporation shall, not later than March 1, 2004, file with the commission a standard tariff providing for net energy metering for eligible fuel cell customer-generators, consistent with this section. Every electrical corporation shall make this tariff available to eligible fuel cell customer-generators upon request, on a first-come-first-served basis, until the total cumulative rated generating capacity used by the eligible fuel cell customer-generators equals 45 megawatts within the service territory of the electrical corporation for an electrical corporation with a peak demand above 10,000 megawatts, or equals 22.5 megawatts within the service territory of the electrical corporation for an electrical corporation with a peak demand of 10,000 megawatts or below. The combined statewide cumulative rated generating capacity used by the eligible fuel cell customer-generators in the service territories of all electrical corporations in the state may not exceed 112.5 megawatts.

(c) In determining the eligibility for the cumulative rated generating capacity within an electrical service area, preference shall be given to facilities which, at the time of installation, are located in a community with significant exposure to air contaminants or localized air contaminants, or both, including, but not limited to, communities of minority populations or low-income populations, or both, based on the ambient air quality standards established pursuant to Section 39607 of the Health and Safety Code.

(d) Each net energy metering contract or tariff shall be identical, with respect to rate structure, all retail rate components, and any monthly charges, to the contract or tariff to which the customer would be assigned if the customer was not an eligible fuel cell customer-generator. Any new or additional demand charge, standby charge, customer charge, minimum monthly charge, interconnection charge, or other charge that would increase an eligible fuel cell customer-generator’s costs beyond those of other customers in the rate class to which the eligible fuel cell customer-generator would otherwise be assigned are contrary to the intent of the Legislature in enacting the act adding this section, and may not form a part of net energy metering tariffs.

(e) The net metering calculation shall be carried out in accordance with Section 2827.9.

(f) A fuel cell electrical generating facility shall not be eligible for participation in the tariff established pursuant to this section unless it commenced operation before January 1, 2014. A fuel cell customer-generator shall be eligible for the tariff established pursuant to this section only for the operating life of the eligible fuel cell electrical generating facility.

SEC. 5. Section 2852 of the Public Utilities Code is amended to read:

2852. (a) As used in this section, the following terms have the following meanings:

(1) “Affordable housing cost,” “affordable rent,” and “lower income households” have the same meanings as in those set forth in Chapter 2 (commencing with Section 50050) of Part 1 of Division 31 of the Health and Safety Code.

(2) “California Solar Initiative” means the program providing ratepayer funded incentives for eligible solar energy systems adopted by the Public Utilities Commission in Decision 05-12-044 and Decision 06-01-024.

(3) “Low-income residential housing” means any of the following:

(A) A multifamily residential complex financed with low-income housing tax credits, tax-exempt mortgage revenue bonds, general obligation bonds, or local, state, or federal loans or grants, and for which either of the following applies:

(i) The rents of the occupants who are lower income households do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(ii) The affordable units have been or will be initially sold at an affordable housing cost to a lower income household and those units are subject to a resale restriction or equity sharing agreement pursuant to the terms of the financing or financial assistance.

(B) A multifamily residential complex in which at least 20 percent of the total housing units are sold or rented to lower income households and either of the following applies:

(i) The rental housing units targeted for lower income households are subject to a deed restriction or affordability covenant with a public entity or nonprofit housing provider organized under Section 501(c)(3) of the Internal Revenue Code that has as its stated purpose in its articles of incorporation on file with the office of the Secretary of State to provide affordable housing to lower income households that ensures that the units will be available at an affordable rent for a period of at least 30 years.

(ii) The housing units have been or will be initially sold at an affordable cost to a lower income household and those units are subject to a resale restriction or equity sharing agreement, for which the homeowner does not receive a greater share of equity than described in paragraph (2) of subdivision (c) of Section 65915 of the Government Code, with a public entity or nonprofit housing provider organized under Section 501(c)(3) of the Internal Revenue Code that has as its stated purpose in its articles of incorporation on file with the office of the Secretary of State to provide affordable housing to lower income households.

(C) An individual residence sold at an affordable housing cost to a lower income household that is subject to a resale restriction or equity sharing agreement, for which the homeowner does not receive a greater share of equity than described in paragraph (2) of subdivision (c) of Section 65915 of the Government Code, with a public entity or nonprofit housing provider organized under Section 501(c)(3) of the Internal Revenue Code that has as its stated purpose in its articles of incorporation on file with the office of the Secretary of State to provide affordable housing to lower income households.

(4) “Solar energy system” means a solar energy device that has the primary purpose of providing for the collection and distribution of solar energy for the generation of electricity, that produces at least one kilowatt, and produces not more than five megawatts, alternating current rated peak electricity, and that meets or exceeds the eligibility criteria established by the commission or the State Energy Resources Conservation and Development Commission.

(b) In establishing the California Solar Initiative, no moneys shall be diverted from any existing programs for low-income ratepayers, or from cost-effective energy efficiency or demand response programs.

(c) (1) The commission shall ensure that not less than 10 percent of the funds for the California Solar Initiative are utilized for the installation of solar energy systems on low-income residential housing. Notwithstanding any other law, the commission may modify the monetary incentives made available pursuant to the California Solar Initiative to accommodate the limited financial resources of low-income residential housing.

(2) The commission may incorporate a revolving loan or loan guarantee program into the California Solar Initiative for low-income residential housing. All loans outstanding as of January 1, 2016, shall continue to be repaid consistent with the terms and conditions of the program adopted and implemented by the commission pursuant to this subdivision, until repaid in full.

(3) All moneys set aside for the purpose of funding the installation of solar energy systems on low-income residential housing that are unexpended and unencumbered on January 1, 2016, and all moneys thereafter repaid pursuant to paragraph (2), except to the extent those moneys are encumbered pursuant to this section, shall be utilized to augment existing cost-effective energy efficiency measures in low-income residential housing that benefit ratepayers.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to expand the efficient use of alternative sources of energy to reduce the use of fossil and nuclear fuels as soon as possible, it is necessary for this act to go into effect immediately.